

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-218754

**DATE:** September 17, 1985

**MATTER OF:** Richard P. Johnson - Real Estate Expenses -  
Loan Origination Fee, Tax Report Fee, and  
Tax Service Fee

**DIGEST:**

1. Transferred employee claimed 2 percent loan origination fee but agency limited reimbursement to 1 percent, based on HUD's advice that a 1 percent loan origination fee is customary in the locality of the employee's new residence. The information provided by HUD creates a rebuttable presumption as to the prevailing fee in the area, and the employee has not submitted evidence sufficient to rebut this presumption. Accordingly, the employee may not be reimbursed the additional 1 percent.
2. Transferred employee claimed a \$20 tax report fee and a \$37 tax service fee. Reimbursement for both fees is prohibited by para. 2-6.2d(2)(e) of the Federal Travel Regulations, since the fees constitute finance charges within the meaning of Regulation Z (12 C.F.R. § 226.4).

Mr. Conrad R. Hoffman, Director of the Office of Budget and Finance (Controller), Veterans Administration (VA), requests our decision concerning Dr. Richard P. Johnson's claim for real estate expenses. For the reasons stated below, we hold that the claimed expenses may not be reimbursed.

**FACTS**

Effective September 4, 1983, Dr. Johnson was transferred from Bay Pines, Florida, to Little Rock, Arkansas. He financed the purchase of a new residence in Little Rock, paying a 2 percent loan origination fee in the amount of \$2,600 to the Twin City Mortgage Company. Dr. Johnson also paid a \$20 tax report fee and a \$37 tax service fee to a title and escrow company.

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The VA reimbursed Dr. Johnson for a 1 percent loan origination fee, suspending the additional 1 percent based on advice from the Little Rock office of the Department of Housing and Urban Development (HUD) that local lending institutions customarily charge a 1 percent fee. In support of this determination, the VA cited our decision in Gary A. Clark, B-213740, February 15, 1984, discussed below. The VA also denied Dr. Johnson reimbursement for the tax report fee and tax service fee, determining that neither fee is reimbursable under the Federal Travel Regulations, incorp. by ref., 41 C.F.R. § 101-7.003 (FTR).

Dr. Johnson reclaimed the disallowed 1 percent loan origination fee and both tax fees. In support of his claim for the additional loan origination fee, Dr. Johnson has submitted a letter from the Twin City Mortgage Company stating that, at the time it closed his loan, 2 percent was the "going rate" for loan origination fees in the Little Rock area for the type of loan involved.

Against this background, the VA questions whether it may allow Dr. Johnson's claim for an additional 1 percent loan origination fee and for the tax report and tax service fees.

#### DISCUSSION

##### Loan Origination Fee

Under 5 U.S.C. § 5724a(a)(4) (1982), an employee may be reimbursed for the expenses he incurs in selling and purchasing a residence pursuant to a permanent change of station. Effective October 1, 1982, the implementing regulations in FTR para. 2-6.2d(1) (Supp. 4, August 23, 1982) were amended to permit reimbursement for loan origination fees and similar charges which are not specifically disallowed by FTR para. 2-6.2d(2). See Robert E. Kigerl, 62 Comp. Gen. 534 (1983). The term "loan origination fee," as used in FTR para. 2-6.2d(1), refers to a lender's fee for administrative expenses, including costs of originating the loan, processing documents, and related work. See Veterans Administration, 62 Comp. Gen. 456 (1983). Reimbursement for a loan origination fee is limited to the amount customarily charged in the locality of the employee's

new residence. See 5 U.S.C. § 5724a(a)(4), as implemented by FTR para. 2-6.2d(1). See also Patricia A. Grablin, B-211310, October 4, 1983.

In Gary A. Clark, cited by the VA, we held that an agency may rely on technical assistance provided by the local office of HUD in determining the customary loan origination fee for a given locality. We stated that the information supplied by HUD creates a rebuttable presumption as to the prevailing loan origination fee charged in the area, and is controlling in the absence of evidence overcoming that presumption. Applying evidentiary standards developed in the context of real estate brokers' commissions, we suggested that an employee may be able to demonstrate through a survey of local lending institutions that the prevailing loan origination fee is higher than that quoted by HUD. However, addressing the facts in Clark, we found that it is not sufficient for an employee to submit the concerned lending institution's statement that its loan origination fee represents the prevailing rate.

In this case, HUD's advice that a 1 percent loan origination fee is customary in Little Rock creates a rebuttable presumption as to the prevailing rate in that area. Although Dr. Johnson has submitted a letter from the Twin City Mortgage Company stating that its loan origination fee of 2 percent represented the "going rate" in Little Rock, this evidence is not sufficient to demonstrate that lenders in Little Rock typically charged a 2 percent fee. See Clark, above, and George C. Symons, B-188527, January 26, 1978. Under these circumstances, Dr. Johnson has not rebutted the presumption that a 1 percent loan origination fee was customary in the Little Rock area, and he may not be reimbursed for a higher amount.

#### Tax Service and Report Fees

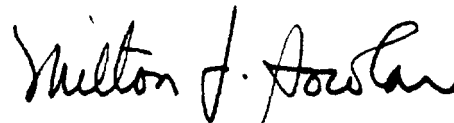
As indicated previously, Dr. Johnson paid a \$20 tax report fee and a \$37 tax service fee to a title and escrow company. The company explained that the \$20 tax report fee would cover its expenses in providing the mortgage company with current tax information required as a condition of loan approval. The \$37 tax service fee would be remitted to the mortgage insurer, in order to defray the insurer's expenses in handling the payment of annual property taxes.

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With the exception of certain expenses specifically authorized in FTR para. 2-6.2d(1), FTR para. 2-6.2d(2)(e) prohibits reimbursement for any real estate expense determined to constitute part of the finance charge under the Truth in Lending Act, 15 U.S.C. § 1605 (1982), as implemented by Regulation Z, 12 C.F.R. § 226.4 (1985). The relevant part of Regulation Z expressly categorizes "service charges" as finance charges when they are imposed incident to or as a condition of the extension of credit. 12 C.F.R. § 226.4(a)(2). Based on this provision of Regulation Z, we have consistently characterized as a finance charge any fee associated with searching, identifying, reporting or paying taxes on mortgaged real property. See John G. Barry, B-199944, April 16, 1981; George J. Wehrstedt, B-192851, May 11, 1979; and Jerrold J. Wahl, B-180981, October 1, 1974.

Consistent with Regulation Z and the above-cited decisions, we hold that the tax report fee and tax service fee incurred by Dr. Johnson must be regarded as finance charges. Accordingly, under the provisions of FTR para. 2-6.2d(2)(e), neither fee may be reimbursed.

For the reasons stated above, we hold that the additional loan origination fee and tax fees claimed by Dr. Johnson may not be paid.



Acting      Comptroller General  
                 of the United States